

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
APR - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 9)
of the Communications Act)
)
Assessment and Collection)
of Regulatory Fees for the)
1994 Fiscal Year)

MD Docket No. 94-19

COMMENTS OF NATIONAL MARINE ELECTRONICS ASSOCIATION

Martin W. Bercovici
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

April 7, 1994

No. of Copies rec'd 085
List A B C D E

TABLE OF CONTENTS

	Page
Table of Contents	i
Summary	ii
I. Statement of Interest	1
II. Overview	2
III. Comments	3
A. Safety Use of Marine Communications Equipment.	5
B. Relationship of FCC Activities to Recreational Boaters.	7
C. Congressional Policy in Exempting Public Safety and Other Noncommercial Operations.	11
IV. Conclusion	13

SUMMARY

The National Marine Electronics Association urges the Commission to WAIVE regulatory fees for recreational boaters, i.e., ship stations which are not mandatorily-equipped with radio equipment.

A \$105.00 licensing/regulatory fee will act as a substantial disincentive to recreational boaters to carry and operate marine communications equipment. For recreational boaters, ship-shore communications can be achieved through use of cellular service, which is not individually licensed and therefore is not subject to a regulatory fee. Discouraging marine radio use would be highly adverse to the public interest in that marine radios provide safety enhancement, through integration with the maritime distress and safety system, availability of weather and navigational broadcasts and other marine safety uses.

Waiver of recreational vessels from regulatory fees is consistent with the statutory authority since the services relied upon by recreational boaters are furnished by the Coast Guard or by privately-operated coast stations rather than by the Commission. In establishing the regulatory fee program, Congress exempted public safety uses of radio, and also noncommercial and certain commercial uses of radio from regulatory fees. These exempt categories are analogous to recreational boater use of marine radio. In its 1993

Legislative Proposals to Congress, the Commission itself noted that a license is not needed by recreational users and is "a burden on applicants and the Commission." The Commission also observed that "Spectrum management occurs through channel sharing," or by the Coast Guard, and that licensing "has little to do with effective spectrum management." Thus, the "benefit" to the user community standard for assessment of regulatory fees is lacking insofar as the recreational user community is concerned. Exemption of recreational boaters from regulatory fees would be consistent with both the underlying statutory authority and the overall public interest.

DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
APR - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 9)
of the Communications Act)
)
Assessment and Collection)
of Regulatory Fees for the)
1994 Fiscal Year)

MD Docket No. 94-19

COMMENTS OF NATIONAL MARINE ELECTRONICS ASSOCIATION

The National Marine Electronics Association (NMEA) respectfully herewith submits its Comments in response to the Notice of Proposed Rulemaking issued by the Commission to implement Section 9 of the Communications Act of 1934, adopted by Section 603(a) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93).^{1/}

I. STATEMENT OF INTEREST.

The NMEA is a trade association of approximately 350 members who are manufacturers and servicing dealers of Marine Electronic Communications and Navigation equipment. The members of NMEA design, manufacture, install and maintain the communications equipment in the Maritime Industry. Furthermore, the recipients of the products and services of the members of NMEA are the end user, boat

^{1/} 59 Fed. Reg. 12570 (Mar. 17, 1994).

owners and the mariners who will be affected by this NPRM. This direct contact with the maritime community, which includes vessels of all types and sizes, gives the members of NMEA a unique insight into the problems and needs of current and future maritime communications.

II. OVERVIEW.

The Commission in this Notice proposes to implement the regulatory fee assessment program mandated by Congress in OBRA '93. As set forth in the newly adopted Section 9(b) of the Communications Act, the regulatory fees are derived by determining the employee base within the Commission responsible for enforcement activities, policy and rulemaking activities, user information services and international activities, "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest." Section 9(g) prescribes fees, by nature of license within each of the three (3) licensing bureaus, including an annual regulatory fee of \$7.00 for "shared use services" within the Private Radio Bureau. Section 9(h) exempts governmental and nonprofit entities and amateur radio operator licenses from fees, and Section 9(d) further allows the Commission to

"waive, reduce or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."

NMEA respectfully urges the Commission to exercise the authority set forth in Section 9(d) to WAIVE the annual regulatory fee as it pertains to recreational boaters, i.e., ship stations for which communications equipment is not mandatory.

III. COMMENTS.

Ship station licensing falls into two (2) broad categories: mandatorily-equipped and voluntarily-equipped ships. Passenger vessels and other ships of prescribed size must carry certain radio equipment pursuant to Parts II and III of Title III of the Communications Act, the Great Lakes Radio Agreement, and the Vessel Bridge-to-Bridge Radiotelephone Act.^{2/} Other vessels, consisting essentially of recreational vessels, may be voluntarily equipped with communications equipment, including EPIRBs and/or radars. Thus, NMEA draws a distinction between the assessment and level of fees applicable to the licensing of communications facilities employed on an occasional basis for recreational

^{2/} Mandatory carriage status is described in Item 14 of the Application for Ship Radio Station License, FCC Form 506.

use and the imposition of fees on commercial entities, e.g., commercial vessel operators, common carriers, commercial broadcasters, and land mobile and other private radio services generally used in extension of commercial operations.

Currently, the license fee applicable to ship stations is \$35.00.^{3/} With the application of the regulatory fee, which is payable in advance for the full license term, the cost to obtain or renew a ship station license will be \$105.00, and likely \$110.00 in the near future. NMEA respectfully submits that imposition of such a fee on recreational boaters will be adverse to the public interest in that it will discourage voluntary equipping with maritime communications equipment, and thereby diminish safety, in contravention of the public interest. Moreover, waiver of the regulatory fee is consistent with the standard established in Section 9(b)(1) in that recreational boaters are not beneficiaries of the Commission's regulatory program, as recognized by the Commission.

When licensing fees were re-established by Congress in the Consolidated Omnibus Budget Reconciliation Act of 1985, ship stations then were not subject to such licensing fees.

^{3/} 49 U.S.C. § 158(g); 47 C.F.R. § 1.1102 (para. 2). This fee will be adjusted to \$40 based upon inflation, as measured by the Consumer Price Index, 49 U.S.C. § 158(b).

See, Establishment of a Fee Collection Program, 2 FCC Rcd 947 (1987) ("Fees I"). It was only with the Omnibus Budget Reconciliation Act of 1989 that vessel stations were subjected to the payment of application fees. See, Establishment of a Fee Collection Program, 5 FCC Rcd 3558 (1990) ("Fees II"). With OBRA '93, if implemented as proposed by the Commission, vessel station operators will be subject to a trebling of the existing fee payment. Indeed, for those recreational vessel operators whose current license terms began prior to early June of 1990 when Fees II took effect, said vessel operators for the first time will be facing a licensing fee, in the amount of \$105.00.

A. Safety Use of Marine Communications Equipment.

By and large, the recreational maritime use of licensed communications facilities is for safety purposes.^{4/} The use of EPIRBs and radars is strictly safety in nature. VHF marine radio, the largest category of licensed maritime communications device, operates as part of the maritime distress and safety system. See 47 C.F.R. § 80.1153(b). The VHF marine radio provides opportunity not only to contact the Coast Guard in the event of an emergency, but also for ship-to-ship alerting and assistance. Moreover,

^{4/} See, Letter from Admiral J.W. Kime, Commandant, U.S. Coast Guard to Chairman Hundt (Feb. 18, 1994), attached as Ex. A.

through the VHF radio, mariners receive storm warnings and other weather information.

VHF marine radios also allow mariners to conduct personal conversations; however, with the growth of cellular service, recreational boaters are not dependent upon VHF marine radio for personal communications service.^{5/}

Portable cellular units may be, and are, carried from car to boat, and are heavily utilized by recreational boaters. Currently, there are 13 million cellular subscribers, a number which is projected to grow to 33 million by 1998,^{6/} a growth rate in excess of 25% annually.^{7/} Notwithstanding more limited propagation, and coverage which is targeted to urban areas rather than the coastal and offshore waters, cellular provides convenience, channel capacity far in excess of that available in the VHF marine service, and -- significant to the user -- lower tariff charges.

The growth of cellular service has had a dramatic impact on VHF coast station service. In the six years from

^{5/} Also, mobile satellite carriers are targeting recreational maritime users. See Wireless for the Corporate User, Nov/Dec 1993, at p. 19.

^{6/} Investor's Business Daily, Mar. 16, 1994, at p. 4, "SMR vs. Cellular: What Radio-Based Communications Have to Offer" (p. 4).

^{7/} The growth rate of cellular subscribers from July 1992 to June 1993 was 47%. Wireless for the Corporate User, Nov/Dec. 1993, at p. 8.

early 1987 to early 1993, 25 VHF maritime public coast stations have been authorized to close by the Commission.^{8/} These closures occurred during the second half of cellular's first decade, and fifteen (15) of the twenty-five (25) applications for closure cited to decline of public coast station traffic due to cellular service competition as a reason for termination of operations.

In addition to the convenience and operating cost advantages of cellular, cellular subscribers do not require individual licenses, and therefore are not subject either to application or regulatory fees. Thus, it is apparent that the imposition of a licensing fee in excess of \$100.00 will act as a powerful disincentive to recreational vessel owners to maintain their voluntary systems and communications licenses.

B. Relationship of FCC Activities to Recreational Boaters.

As quoted above, the regulatory fees are intended to recover the costs associated with regulatory activities of the Commission in four (4) enumerated areas. Initially, it should be noted that only some 6% of the approximately 10 million recreational boaters hold FCC license authority.

^{8/} See, Section 214 Applications for Station Closure, File Nos. I-T-D-87-005, -006, -009; I-T-D-88-003, -004, -006, -007; ENF-88-16; I-T-D-89-007; -008; I-T-D-90-001; I-T-D-90-008, -009, -010; I-T-D-91-003; I-T-D-91-005, -006, 009, -010, -012 (three stations); I-T-D-92-001, -003, and -004.

Accordingly, the regulatory activity of the Commission, and the operation of marine communications devices, is not seen as generally beneficial to recreational boaters. This is particularly so with regard to recreational boaters who make use of cellular service, inasmuch as those users have shunned any interest whatsoever in marine regulatory activities.

Critical analysis of the criteria set forth in Section 9(a) reveals that recreational boaters receive little, if any, benefit from the Commission's regulatory program. First, international activities are of no interest whatsoever to the recreational boating community, who operate in their nearby lakes, bays, rivers and coastal areas. Second, the information services utilized by recreational boaters entail weather and other safety information. This information is disseminated by the Coast Guard and by public coast stations. The Commission plays no role in such information dissemination. As to enforcement activities, the Coast Guard provides vessel inspections and through those inspections initiates enforcement action. Thus, the Commission's involvement in enforcement activities relating to recreational boaters is nominal, at best.

The fourth criteria specified in Section 9(a) is policy and rulemaking activities. The Commission's Annual Reports for 1989 through 1992 identify 48 rulemakings by the Private

Radio Bureau. Of those, only three (3) were of direct interest to the recreational boating community. Those proceedings concerned marine secondary calling channels (PR Docket Nos. 91-151 and 92-179) and synthesized voice communications (PR Docket No 91-294).^{9/} From a user population standpoint, ship station licenses constitute more than 20% of the total Private Radio Services stations.^{10/} Accordingly, the rulemaking activity of the Private Radio Bureau relevant to the recreational boating community is disproportionately small as compared with the population of stations regulated by the Bureau; and consequently, the application of the "shared use" regulatory fee to recreational boaters is significantly and disproportionately excessive.^{11/}

Other factors relevant to the Commission's consideration of the adjustment of the regulatory fees, as

^{9/} The balance of the rulemakings related to the Aviation, Amateur, Personal, Private Land Mobile and Private Operational-Fixed Microwave Services, and in several instances to mandatorily-equipped marine licensees.

^{10/} Private Radio Statistics, Annual Report Fiscal Year 1992, p. 55.

^{11/} From the standpoint of benefit of rulemaking activities to the recreational boating community, the Commission has proposed to allow land mobile users to share maritime public coast station channels with minimal separation, hardly a regulatory program on behalf of, or of benefit to, recreational boaters. See, PR Docket No. 92-257.

mandated by Section 9(b)(1)(A) of the Act, are "service area coverage, shared use versus exclusive use and other factors the Commission determines are necessary in the public interest." The service area coverage element relates exclusively to those who utilize their communications systems for commercial purposes. With regard to shared versus exclusive use, excluding channels restricted to intership communications, Great Lakes operations, and Coast Guard frequencies, the 600,000 licensed recreational boaters share five (5) VHF maritime channels.^{12/} This hardly can be considered to be quality communications opportunity!^{13/}

The Commission itself concurs that licensing of recreational boaters confers no benefit on the user community. In recommendations to Congress in conjunction with reauthorization of the Commission for fiscal years 1994 and 1995, the Commission urged that the Communications Act be amended to forgo individual licensing in "the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio" and to allow the Commission to authorize such

^{12/} See, 47 C.F.R. § 80.373(f).

^{13/} Compare, the Business Radio Service, which the Commission's Private Radio Bureau statistics reflect has an equivalent number of licensed stations as the Maritime Services. As set forth at Section 90.75(b) of the Rules, the Business Radio Service enjoys approximately 400 licensable channels.

operations by regulation. In explanation, the Commission observed that "For domestic operations only, a license is not needed and is a burden on applicants and the Commission." The Commission went on to note that marine channels are shared, "so spectrum management occurs through channel sharing, in real time, or through control exercised generally by ... Coast Guard stations. Thus, licensing has little to do with effective spectrum management."^{14/} Accordingly, if licensing is a burden and should not be imposed, and the periodic licensing fee forgone, a fortiori, there is no justification for imposition of an annual regulatory fee on voluntarily-equipped mariners.

C. Congressional Policy in Exempting Public Safety and Other Noncommercial Operations.

In adopting Section 9 of the Communications Act, Congress exempted governmental and non-profit entities, which in large measure also overlap with "public safety" entities, although the latter is not specifically exempted in OBRA '93.^{15/} The Commission proposes, however, to exempt all public safety entities, including Special Emergency Radio Service licensees, some of whom operate in a commercial fashion, from regulatory fees. Given the

^{14/} See, 1993 Legislative Proposal of the Federal Communications Commission, at p. 24, associated herewith as Ex. B, in pertinent part.

^{15/} See NPRM at ¶¶ 22-23.

essential public safety nature of recreational marine radio use, NMEA respectfully submits that the "public safety" exemption concept also should be applied to recreational boaters. This also is consistent with the exemption by Congress of non-commercial broadcasters from regulatory fees. Finally, it is noted that Congress exempted Amateur Radio operator licenses from regulatory fees. This exemption was granted notwithstanding that amateurs consume a substantial portion of Private Radio Bureau regulatory and other resources. Congress obviously was not applying a strictly mercenary standard to the adoption of regulatory fees, inasmuch as amateur licensees are almost as numerous as ship station licensees.^{16/} Thus, exercise by the Commission of its discretion under Section 9(d) would be consistent with the public interest, and with Congressional policy in adoption of OBRA '93.^{17/}

^{16/} According to the Commission's 1992 Annual Report, amateur licensees exceeded 583,000, as compared with 618,000 ship stations.

^{17/} Waiver of the regulatory fees further would be consistent with the Commission's recommendation that Congress empower the Commission to authorize recreational vessels by rule, rather than by individual licenses. Such an approach would exempt recreational boaters from regulatory fees as requested herein, as well as licensing fees.

IV. CONCLUSION.

WHEREFORE, THE PREMISES CONSIDERED, the National Marine Electronics Association respectfully urges the Federal Communications Commission to consider the inherent public safety aspects of marine radio operation by recreational boaters, the substantial impediment to use of marine radio from the imposition of a substantial licensing/regulatory fee, the cellular alternative readily available to recreational mariners for communications purposes, and the Congressional policy of exempting nonprofit, public safety and personal radio use from regulatory fees, and to extend those principles to WAIVE regulatory fees for recreational (non-mandatorily equipped) boaters.

Respectfully submitted,

NATIONAL MARINE ELECTRONICS ASSOCIATION

By: 

Martin W. Bercovici
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Its Attorney

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

Washington, D.C. 20593-0001
Staff Symbol: G-T
Phone (202) 267-2767
Fax: (202) 267-2598

2405/1

FEB 18 1994

The Honorable Reed E. Hundt
Chairman, Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Mr. Chairman:

As you are aware, the Omnibus Budget Reconciliation Act of 1993 requires the Federal Communications Commission to collect an annual regulatory fee for Private Radio Bureau shared use licenses. The Commission intends to propose regulations to establish a \$7 per year license fee for marine (ship) station licenses. The Coast Guard is concerned that the proposed license fee for marine (ship) station licenses, which cover 10 years and will result in a net \$110 fee, will discourage owners of vessels not required to carry radios, primarily recreational vessels, from carrying essential safety equipment, such as VHF marine radios, emergency position indicating radiobeacons (EPIRBs), and radar. This equipment, although not required on recreational vessels, greatly enhances safety and significantly improves the Coast Guard's ability to provide assistance in emergencies. This fee exceeds the cost of certain marine radios.

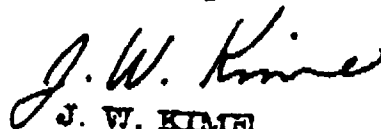
The Act allows the Commission to "waive, reduce or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." The Coast Guard believes that waiver of the marine (ship) station license regulatory fee for vessels which carry radio equipment, but are not required to do so, would enhance maritime safety and promote the public interest. Therefore, I ask that the Commission waive the fee for such vessels.

I also understand that the Commission is considering whether vessels not required to carry radio equipment, but doing so voluntarily, should continue to be required to have marine (ship) station licenses. The Coast Guard is concerned that the mariner's awareness of maritime radio regulations would diminish, and the integrity of our VHF National Distress System, bridge-to-bridge communications, and other safety communications would be jeopardized if vessels could carry radio equipment without being licensed. A station license provides a means for enforcement action even if an illegal transmission is not made by the owner of the vessel. Therefore, I ask that the Commission not remove this licensing requirement.

2405/1

Your assistance in these matters will certainly enhance maritime safety and be in the best interests of not only the mariner, but also the American public.

Sincerely,

A handwritten signature in cursive script, reading "J. W. Kime".

J. W. KIME
Admiral, U. S. Coast Guard
COMMANDANT



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 21, 1993

OFFICE OF
THE CHAIRMAN

Honorable Edward J. Markey
Chairman, Subcommittee on Telecommunications
and Finance
Committee on Energy and Commerce
House of Representatives
316 Ford House Office Building
Washington, DC 20515

Dear Mr. Chairman:

To assist the Subcommittee in the upcoming FCC reauthorization process, we are pleased to submit proposed reauthorization legislation and a number of complementary proposed amendments to the Communications Act.

The legislation would reauthorize the Commission for fiscal years 1994 and 1995. The accompanying draft statutory amendments are designed to improve the Commission's ability to discharge its statutory duties efficiently and effectively. Proposed statutory language and a short explanation are presented for each of these proposed amendments.

The Commission also recommends that Congress consider legislation creating a nationwide "call-before-you-dig" requirement to prevent inadvertent damage to underground communications facilities. The Network Reliability Council, an FCC advisory committee, has found that fiber optic cable cuts are the single leading cause of telephone network outages. Because of fiber's high capacity, just one fiber cut can cause a dramatic outage. Many of these outages could be prevented by requiring anyone about to dig to call for assurance that there are no underground utilities nearby. Some states already have such "one-call" systems. The Council found these to lack uniformity, however, and to lack effective enforcement power. Federal legislation could solve these problems, and fortunately industry supports doing so. The Network Reliability Council has prepared model legislation for states to consider, and also recommends federal legislation. We will supply, under separate cover, the NRC's analysis and will be happy to work with you and your colleagues to write appropriate legislation.

If your staff have any questions or need further information regarding the draft legislation, we will be glad to brief you at your convenience.

Sincerely,

Handwritten signature of James H. Quello in cursive.

James H. Quello
Chairman

Handwritten signature of Andrew C. Barrett in cursive.

Andrew C. Barrett
Commissioner

Handwritten signature of Ervin S. Duggan in cursive.

Ervin S. Duggan
Commissioner

1993 LEGISLATIVE PROPOSALS
OF THE
FEDERAL COMMUNICATIONS COMMISSION

LICENSING OF PRIVATE RADIO SERVICE BY RULE

Section 307(e) of the Communications Act of 1934 (47 U.S.C. 307(e)) is amended to read as follows:

"(e)(1) Notwithstanding any license requirement established in this Act, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the aviation radio service for aircraft stations operated on domestic flights when such aircraft are not otherwise required to carry a radio station; and (B) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station, if the Commission determines that such authorization serves the public interest, convenience, and necessity.

(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this Act and with rules prescribed by the Commission under this Act.

(3) For purposes of this subsection, the terms 'aircraft station,' and 'ship station' shall have the meanings given them by the Commission by rule."

Explanation

Section 301 specifies, among other things, that the use or operation of radio equipment on ships and aircraft of the United States must be authorized by the grant of a radio station license. Similarly, the international Radio Regulations require licenses for vessel and aircraft radio stations when operated on international voyages or flights. Currently, the Commission routinely grants upon request, with some exceptions not relevant here, an individual aircraft or ship station license to any person who properly completes an application. For domestic operations only, a license is not needed and is a burden on applicants and the Commission.

This amendment would permit the Commission to authorize the operation of radio equipment on ships and aircraft that operate only domestically. Especially in the case of aircraft, the Commission's work is redundant with that of the FAA. The FAA assigns each aircraft an identification number which then becomes the FCC call sign. In the case of vessels, call signs are not necessary, as vessel names are used in some cases for identification and could be used generally for domestic operations. In addition, the licenses grant no exclusive rights to channels. All channels are shared among all licenses, so spectrum management occurs through channel sharing, in real time, or through control exercised generally by FAA or Coast Guard stations. Thus, licensing has little to do with effective spectrum management. Further, authorizing ships and aircraft to operate by rule is consistent with the provision in section 307 for the radio control and citizens band radio services. Finally, authorization for such ship and aircraft stations in domestic operations only would not violate the international Radio Regulations. Therefore, adoption of this amendment will improve efficiency of government operations and eliminate an unnecessary burden on vessel and aircraft operators.